Restatement of the Law of Contracts

The First Fruits of a Nation-wide Effort of the Legal Profession to Clarify, Unify and Simplify Our Common Law

By GEORGE W. WICKERSHAM
President, The American Law Institute

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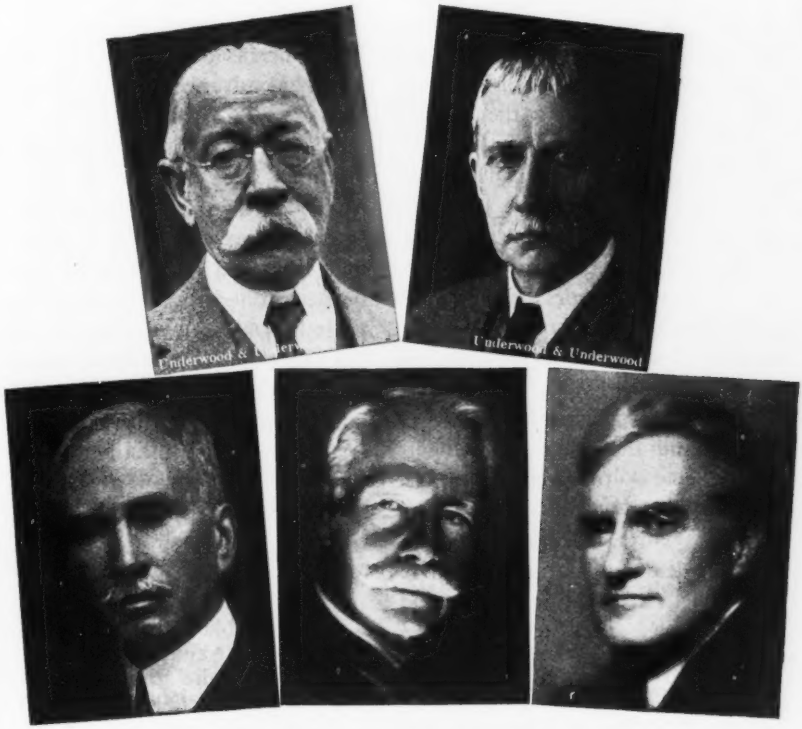
THE publication by the American Law Institute of the Restatement of the Law of Contracts is not merely the issuance of another law book. It is the first tangible fruit of a process which was inaugurated nine years ago, as a result of a careful inquiry made, at the instance of the Association of American Law Schools, by a body of lawyers, into the reasons for the existing general dissatisfaction with the administration of justice. That inquiry resulted in the incorporation in the District of Columbia, in February, 1923, of the American Law Institute, a corporation whose high purpose was

> "to promote clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and to carry on scholarly and scientific legal work."

In view of the existing state of the unwritten or common law of America, the immediate work undertaken by the Institute was to have the principal subjects of the common law in America systematically and scientifically stated or restated by competent scholars, and after thorough examination and criticism by the officer, the Council, and the members of the Institute, to publish the same, for the use of the profession, in the hope that the high professional authority back of the restatements would lead to their acceptance by bench and bar as prima facie accurate, the burden being upon any one who should object and contend the contrary.

This work has been made possible by the generosity of the Carnegie Corporation. It has been inspired by the vision and the enthusiasm of America's greatest lawyer and statesman, Elihu Root; by the indefatigable direction and intelligent



Officers of the American Law Institute

Top row, left to right, George W. Wickersham, President; Elihu Root, Honorary President. Bottom row, left to right, James Byrne, Vice-President; George Welwood Murray, Treasurer; Benjamin N. Cardozo, Vice-President

labor of the Director, Wm. Draper Lewis, and by the devoted scholarly labors of the leading American scholars in the field of jurisprudence.

This Restatement of the Law of Contracts is the first completed volume restating the law of a particular subject which the Institute has been able to issue. In the main, its provisions were drafted by Professor Samuel Williston, of Harvard University, the author of a monumental work on the law of Contracts and a scholar of recognized preëminence. Certain chapters, however, were prepared by Professor Arthur L. Corbin of the Yale University Law School. Every line, almost every word, of the Restatement has been analyzed, criticized and discussed by a selected body of competent critics at meetings extending over a period

of nine years, and also has been subject to searching criticsm on the part of the very large number of lawyers and judges composing the Council and the membership of the Institute. The completed Restatement is now finally issued for the use of bench and bar, in the belief that the qualifications of its authors and the character of the sponsors of the work will give it an authority with the profession which use will determine to be justified.

During the progress of the work on this and the other restatements in the course of preparation, on the subjects of Conflict of Laws, Agency, Torts, Trusts, Property and Business Associations, tentative drafts of particular chapters and sections from time to time have been published and distributed to the members of the Institute, law schools, and other selected portions of the profession, for comment and criticism. Some idea of the value ascribed by the bench to this work, and of the anticipation with which its appearance has been awaited, may be gathered from the fact that up to January 1st, 1932, in not less than 125 reported cases, have courts—generally courts of last resort—cited these tentative draft restatements as embodying accurate statements of the existing law. These citations occur in reports from 23 States of the Union, in 3 of the United States Circuit Court of Appeals, and in several of the District Courts of the United States. These citations have increased in number as the work has advanced. There were 10 in 1928, 32 in 1929, 25 in 1930, and 51 in 1931. Fifty-eight of the citations were of the Restatement of Contracts, of which 4 were found in the reports of 1928, 9 in 1930, and 25 in 1931. In a decision rendered in one of the Courts of Appeals in Ohio, during the last year, the court, in a unanimous decision by three judges, decided an important controversy on the authority of certain sections in the Institute's Restatement of the Law of Contracts, and said:

> "We are content, however, to take the Restatement as the law of this State without exploring its soundness, and hold that of its own vigor it is adequate authority. This is not to say that the Restatement is of necessity perfect and that in it is to be found the law's last word. We only hold that he who would not have it followed has the burden of demonstrating its unsoundness."

This is the attitude which it has been the hope of the founders and members of the Institute would be assumed by the courts towards this work. This aspiration was voiced by Mr. Root in an address at the initial meeting of the Institute. It is in the confident hope that the profession in general will receive it in this spirit, that the Institute submits this first completed product of its labors to the bench and bar of America.

The Light That Failed

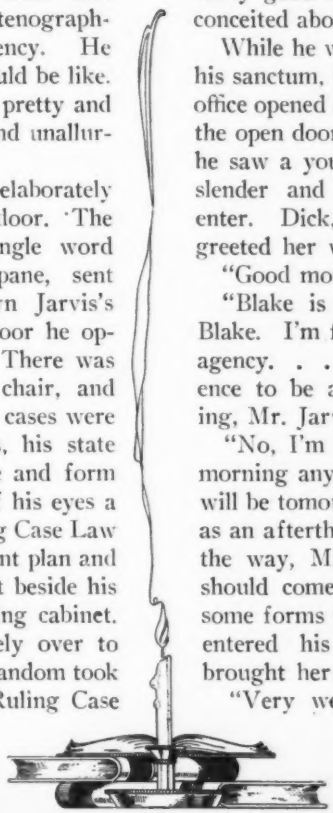
By RAE BEAMISH

As Dick Jarvis entered for the first time his new office, and incidentally his first one, he read proudly the name on the door: RICHARD JARVIS, ATTORNEY-AT-LAW.

With a light heart and a keen boyish smile of anticipation broadening his face, he greeted the empty chair where his stenographer would sit when she reported to him. She was coming from a Stenographers' Employment Agency. He wondered what she would be like. Whether she would be pretty and attractive, or homely and unallurring.

Across the none-too-elaborately furnished room was a door. The mere sight of the single word PRIVATE on the pane, sent thrills of delight down Jarvis's back. Going to the door he opened it, went inside. There was his desk and swivel chair, and there in sectional book cases were his college text books, his state code, his local practice and form books and the pride of his eyes a brand new set of Ruling Case Law bought on the instalment plan and placed in new cases set beside his big but alas empty filing cabinet.

Dick walked leisurely over to his book cases and at random took down volume 21 of Ruling Case Law, opened it, and put it on his desk beside his telephone. He went to the windows, looked out. All that he could see was other office windows, and in the windows an occasional stenographer working at her desk. As he stood there by the windows daydreaming, he looked quite boyish. In fact he was but a boy; he was only twenty-five. His physique was admirable; he was of medium height, square-shouldered and firm. He was fairly good-looking, but was not conceited about it.



While he was standing there in his sanctum, the door of the outer office opened and closed. Through the open door of his private office he saw a young woman, tall and slender and attractively attired, enter. Dick, his reverie broken, greeted her warmly:

"Good morning, Miss . . ."

"Blake is the name, Virginia Blake. I'm from the employment agency. . . . Any correspondence to be answered this morning, Mr. Jarvis?"

"No, I'm afraid not—not this morning anyway. . . . There will be tomorrow though." Then as an afterthought, he added, "by the way, Miss Blake, if anyone should come in you might copy some forms from this book." He entered his private office and brought her his local form book.

"Very well then, I'll just sit here and look busy, in case anyone should walk in you know. I've brought a book

along to read so—so, if that's all right with you, Mr. Jarvis—"

"Of course read if you want to do so. By all means!" Dick responded. "I'll just step inside my office and take care of a few matters meanwhile."

Instead of closing the door after him, he left it partly open. He had a plan in mind. And he wanted to try it out at his earliest opportunity.

Seating himself comfortably at his desk, Dick picked up volume 21 Ruling Case Law and started to read. Suddenly he heard the door of the outer office open and close, and then a man's voice. Instantly he moved the telephone on his desk near him, and took off the receiver.

"Main 1890."

Dick heard Miss Blake tell the prospective client that Mr. Jarvis was busy at the moment, but that he would see him presently . . . if he wouldn't please be seated. Presently he heard the stead click click of his stenographer's machine.

"Is this Marshall, Johnson & Blackwell?" Dick asked in a voice loud enough to be easily heard in the other office. "May I speak to Judge Marshall? . . . This is Mr. Jarvis—Richard Jarvis—speaking. Good morning, Judge. . . . This is Dick Jarvis. . . . Fine. . . . Remember last night at the club we were speaking about the Vanderpool Trust? . . . I was thinking about our discussion of the distinction between the rules against perpetuities and restraints on alienations, and I checked our conclusion with Ruling Case Law. I find that in vol. 21 R. C. L. 284, there is a very clear discussion on this point. And when I turned to vol. 7, p. 5037 of the Permanent Supplement I found a more recent annotation on the question in L.R.A.1917D, 905. . . . Yes. . . . Yes, the citation is 21 R. C. L. p. 284, and R. C. L. Perm. Supp. p. 5037. . . . Not at all. . . . I'm always glad to discuss legal theory with you. . . . Goodbye, Judge."

If that didn't create a good impression in the mind of the client in the outside office, nothing ever would, thought Jarvis as he pressed the buzzer.

"Mr. Jarvis will see you now," he heard Virginia Blake say.

A small under-sized man, poorly dressed, wearing a pair of heavy shell rimmed glasses, entered.

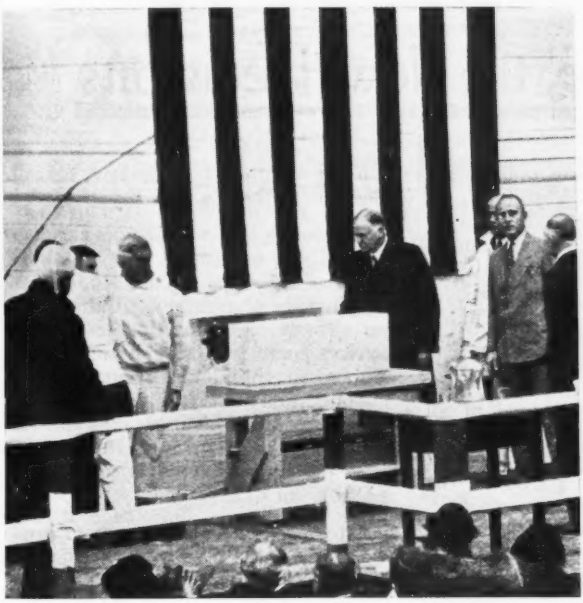
Dick looked up with anticipation, and said:

"Well, Sir, what can I do for you?"

"I'm from the Imperial Telephone Company. I've come to connect up your phone."

Slowly Dick closed volume 21 Ruling Case Law and shook his head.

A Momentous Occasion in the History of the Supreme Court



President Hoover at the laying of the corner stone of the new Supreme Court Building,—a feature of the fifty-fifth annual meeting of the American Bar Association in Washington, D. C., October 13, 1932. Photo shows the President placing mortar on the corner stone.—*Wide World Photo.*

With the Legal Bards

The following poems were submitted by their author, the Hon. Harry Brokaw, Judge of the Municipal Court, East Liverpool, Ohio.

Pulling a Fast One

He's forever pulling fast ones,
And I hate him, yes I do,
For he cost me thirteen twenty,
And I'm feeling rather blue.
I was only doing fifty,
When he ordered me to stop.
But his eagle eye was on me,
Curses on that traffic cop.

Reckless Driving

She was pinched for reckless driving,
But she never faced the court,
Though her fast and reckless driving
Was a thing of bad report,
For the pinch for reckless driving,
That had turned the maiden pale,
Was the pinch beneath the hammer,
When she tried to drive a nail.

Among the New Decisions

Adoption — *effect on inheritance.* In Re Roderick, 158 Wash. 377, 80 A.L.R. 1398, 291 Pac. 325, it was held that an adopted child may claim a share of the estate of its natural parent under a statute enacting that any child not named or provided for in the will of a parent shall take as in case of intestacy, where the adoption statute, although providing that the natural parents shall be devested of all legal rights and obligations in respect to the child, and that the child shall be, to all intents and purposes, the child and legal heir of the adopter, does not explicitly devest the child of the right of inheritance from its natural parents.

Annotation: Adoption as affecting right of inheritance through or from natural parents or other natural kin. 80 A.L.R. 1403.

Appeal — *remarks of counsel.* In Hudson v. State of Delaware, — Del. —, 80 A.L.R. 219, 156 Atl. 881, it was held that remarks by counsel for the state in a criminal case while addressing the jury, on the failure of the defendant to call character witnesses, accompanied by the statement that, if the defendant had called such witnesses, the state would have had the right to rebut their testimony, constitute reversible error where objection thereto was overruled by the court.

Annotation: Comment by prosecution on failure of defendant to call character witnesses. 80 A.L.R. 227.

Attorneys — *overcharging client.* In Re Louis Goldstone, — Cal. —, 80 A.L.R. 701, 6 Pac. (2d) 513, it was held that the charging of an attorney's fee grossly disproportionate to the services performed is such misconduct as to merit disciplinary action.

Annotation: Exorbitant fees or charges or unconscionable contract for compensation as ground for disbarment or suspension of attorney. 80 A.L.R. 706.

Attorney general — *power to compromise suit.* In State v. Young, — Wyo. —, 81 A.L.R. 114, 7 Pac. (2d) 216, it was held that the attorney general of a state has power to settle and compromise a suit when the rights of the state are in doubt and are in honest dispute, at least when he acts with the approval of the executive head of the department having charge of the matter involved in the suit.

Annotation: Power of attorney general to settle and compromise or dismiss suit or proceeding. 81 A.L.R. 124.

Automobiles — *Negligence at intersection of primary and secondary highways.* In Keir v. Trager, 134 Kan. 505, 81 A.L.R. 181, 7 Pac. (2d) 49, it was held that one driving on a primary highway approaching an en-

trance of a secondary highway into such highway, at which a stop sign has been erected by the state highway commission, is not negligent in assuming that the driver of a car on the secondary highway will stop in obedience to the sign.

Annotation: Rights and duties at intersection of arterial (or other favored) highway and nonfavored highway. 81 A.L.R. 185.

Banks — *reopening.* In Becker v. Amos, — Fla. —, 80 A.L.R. 1480, 141 So. 136, it was held that upon the liquidation of a bank which, after a former closing, had been reopened under a so-called "freezing agreement" authorized by statute, whereby its depositors agreed to take certificates of deposit payable at a future date for a portion of their deposits, and that a further portion should be held as a subordinated claim to be realized out of the liquidation of "slow" and "doubtful" paper, assets acquired after the reopening are properly to be applied first to the liquidation of obligations incurred after the reopening.

Annotation: Legal questions presented by the reopening of closed bank. 80 A.L.R. 1487.

Banks — *priorities for fraud.* In Mallett v. Tunnicliffe, — Fla. —, 80 A.L.R. 785, 136 So. 346, it was held that the successful persuasion of a depositor by a bank officer not to withdraw funds on deposit with a bank known by the officer to be in failing circumstances is not the equivalent of a new deposit of the funds which the depositor was persuaded not to withdraw, so as to entitle such depositor to a preference on the theory that, for a bank to induce one to make a deposit by false representations of a bank's solvency is a fraud creating a trust against the bank, which results in a preferred claim on the part of the defrauded depositor.

Annotation: Right of depositor to preference in assets of insolvent bank because dissuaded by bank officials or employees from withdrawing deposit after insolvency. 80 A.L.R. 795.

Bankruptcy — *judgment against after discharge.* In Smith v. Davis, — Me. —, 81 A.L.R. 78, 158 Atl. 359, it was held that while a judgment in an action upon a claim to which a discharge in bankruptcy is a bar cannot be enforced against a discharged bankrupt, a special judgment may be entered against him for the purpose of perfecting a right of action against one secondarily liable, or in order to charge a garnishee, or to establish the right to levy on attachable property of the bankrupt the title to which may not have passed to the trustee in bankruptcy.

Annotation: Right to and form of judgment against one discharged in bankruptcy in order to sustain attachment or garnishment or to perfect a right of action against one secondarily liable as surety on a bond given to dissolve the same. 81 A.L.R. 81.

Bills and notes — *clause for anticipation of payment.* In Northridge v. Grenier, — Mass. —, 81 A.L.R. 394, 180 N. E. 226, it was held that a note payable in instalments is not rendered non-negotiable by a reservation therein of the right to anticipate payments in view of the provisions of the Negotiable Instrument Act that an instrument to be negotiable must be payable on demand or at a fixed or determinable future time, and that an instrument is payable at a determinable future time which is expressed to be payable on or before a fixed or determinable future time specified therein.

Annotation: Negotiability as af-

fected by reservation of obligor's right to anticipate time of payments. 81 A.L.R. 396.

Bonds — *defaults after term.* In American Surety Co. v. Independent School District, 53 F. (2d) 178, 81 A.L.R. 1, it was held that a school district treasurer's bond covering a term of one year, expiring on August 1st, "and until his successor is elected and has qualified," is, as a matter of law, not in force on November 12th following, when he qualifies as his own successor, so as to cover a default consisting of his failure to turn over to himself as his successor funds received and not lawfully paid out by him, where a statute requires an acceptance of office and official oath to be filed within ten days after notice of election or appointment or before the filling of the vacancy deemed to exist upon failure to do so, and provides that upon failure to give bond his office may be declared vacant and a new treasurer appointed.

Annotation: Liability of sureties on bond of public officer for acts or defaults occurring after termination of office or principal's incumbency. 81 A.L.R. 10.

Brokers — *acting for both parties.* In Harrods v. Lemon [1931] 80 A.L.R. 1067, 2 K. B. 157, it was held that a concern carrying on the business of real estate broker and that of builder does not forfeit the right to a commission on a sale to a purchaser found by it, who agreed to purchase subject to a builder's examination, by inno-

cently accepting employment by the prospective purchaser to make such examination and reporting the need of repairs, whereupon the purchaser refused to take the property unless a deduction should be made from the purchase price, where, upon discovering the double employment, it suggested that an independent examination be made, and the seller failed to act on the suggestion but continued negotiations, which resulted in a sale at a reduced price.

Annotation: Acceptance by principal of services of broker with knowledge that he acted also for the other party as affecting broker's right to compensation. 80 A.L.R. 1075.

Carriers — *improper packing of goods.* In Gehrke v. American Railway Express Co. 61 N. D. 668, 81 A.L.R. 808, 240 N. W. 321, it was held that when it is apparent to a carrier or his servants, upon ordinary observation, that perishable goods presented for carriage are not properly packed, or so improperly or insufficiently packed that their transportation in that condition would be likely to entail on the carrier an element of extra risk, the carrier may refuse to receive the goods in that condition; but if he does see fit to receive them, he assumes to carry them as they are, and his full common-law liability as a carrier attaches to the contract of carriage.

Annotation: Carrier's liability as affected by improper packing or preparation of goods for shipment. 81 A.L.R. 811.

Constitutional law — *destruction of gambling device.* In State v. Kizer, 164 S. C. 383, 81 A.L.R. 722, 162 S. E. 444, due process is not denied by a statute providing that a slot machine seized as illegal may be taken before a magistrate who, if he comes to the conclusion that the machine is a gambling device, may order it to be summarily destroyed.

Annotation: Constitutionality of statutes providing for destruction of gambling devices. 81 A.L.R. 730.

Constitutional law — *enjoining unlicensed person.* In State v. Fray, — Iowa, —, 81 A.L.R. 286, 241 N. W. 663, it was held that a statute providing that any person engaging without license in a profession or business for which a license is required may be restrained by injunction is not unconstitutional as denying due process of law by depriving him of the jury trial to which he would be entitled in a proceeding against him to enforce the penalty for violating the license act.

Annotation: Right to enjoin practice of profession or conduct of business without a license or permit. 81 A.L.R. 292.

Contributory negligence — *riding on running board of automobile.* In Vandell v. Sanders, — N. H. —, 80 A.L.R. 550, 155 Atl. 193, it was held that one invited by the driver of an automobile to ride is not guilty of contributory negligence as a matter of law in standing on the running board.

Annotation: Liability for injury to one riding on running board of automobile or other place outside body of car. 80 A.L.R. 553.

Damages — *future suffering.* In Coppinger v. Broderick, 37 Ariz. 473, 81 A.L.R. 419, 295 Pac. 780, it was held that damages are awardable in a personal injury action for future pain and suffering if such pain and suffering are reasonably certain.

Annotation: Future pain and suffering as element of damages for physical injury. 81 A.L.R. 423.

Death — *contractual relation.* In Braun v. Riel, — Mo. —, 80 A.L.R. 875, 40 S. W. (2d) 621, it was held

that if a tort arising out of nonobservance of contract duties results in a death, an action under the wrongful death statute will lie.

Annotation: Contractual relationship as affecting right of action for death. 80 A.L.R. 880.

Debts — *defeasance in deed conditioned on.* In Lynch v. Lynch, 161 S. C. 170, 80 A.L.R. 997, 159 S. E. 26, it was held that property may be withheld from the claims of creditors by a provision for defeasance in case of any attempt to subject it to the payment of such claims, whether the debtor's estate therein is legal or equitable.

Annotation: Validity of provisions of instrument creating legal estate attempting to exempt it from claims of creditors. 80 A.L.R. 1007.

Evidence — *admissions during compromise.* In Erickson v. Webber, — S. D. —, 80 A.L.R. 914, 237 N. W. 558, it was held that the rule that an offer to compromise or settle a disputed claim will not be received as an admission of the party making the offer does not exclude proof of admissions relating to distinct or independent facts, though made during the discussion of the compromise.

Annotation: Admissibility of admissions made during discussion of compromise. 80 A.L.R. 919.

Evidence — *admissions by silence.* In State v. Portee, 200 N. C. 142, 80 A.L.R. 1229, 156 S. E. 783, it was held that the failure of one charged with crime, who testified that he was at home at the time the crime was committed, to reply to a statement made by his wife to officers in his hearing, to the effect that he had returned home at a later hour, is competent evidence to contradict him.

Annotation: Admissibility of inculpatory statements made in the presence of accused, and not denied or contradicted by him. 80 A.L.R. 1235.

Evidence — *conclusiveness of party's testimony.* In Kanopka v. Kanopka, 113 Conn. 30, 80 A.L.R. 619, 154 Atl. 144, it was held that the testimony of a party to a fact, unless it amounts to such a stipulation or waiver as to have the force of a judicial admission, is ordinarily no more conclusive upon him than the evidence given by any other witness; and it is the duty of the court or jury to determine the fact not alone from the testimony given by the party, but from all the evidence in the case.

Annotation: Conclusiveness of testimony of a party favorable to adverse party. 80 A.L.R. 624.

Evidence — *conviction as evidence in civil action.* In Schindler v. Royal Ins. Co. 258 N. Y. 310, 80 A.L.R. 1142, 179 N. E. 711, it was held that proof of a conviction of crime is admissible in evidence in a civil action as prima facie evidence of the facts involved.

Annotation: Conviction or acquittal as evidence of facts on which it was based in civil action. 80 A.L.R. 1145.

Evidence — *disposal of property after accident.* In Harmon v. Haas, — N. D. —, 80 A.L.R. 1131, 241 N. W. 70, it was held that it is not error for the court to permit the plaintiff to show that, immediately after an automobile collision said to have been caused by the appellant's car, the appellant transferred all of his real estate, as such evidence is permissible on the theory of an admission. The appellant, if he desires, may show his reasons for any such transfer.

Annotation: Admissibility in civil action of disposal of property as showing consciousness of liability. 80 A.L.R. 1139.

Evidence — *negligence of other accidents.* In McCormick v. Great Western Power Co. — Cal. —, 81 A.L.R. 678, 8 Pac. (2d) 145, it was held that evidence of previous similar accidents not too remote in place or point of time is admissible for the purpose of showing that an electric company might reasonably have anticipated that people would come into contact with its wires.

Annotation: Admissibility of evidence of other accidents on issue of negligence in respect of maintenance of electric wires, rails, etc. 81 A.L.R. 685.

Evidence — *other false pretense.* In State v. Clamp, 164 Wash. 653, 80 A.L.R. 1302, 3 Pac. (2d) 1096, it was held that on the trial of a charge of obtaining money by false pretenses, by representing that one of the defendants was the proprietor of an auto laundry, the equipment of which he had rented, and that the other was a broker engaged in finding a purchaser for a half interest in the business, evidence is admissible of a subsequent attempt by defendants, in another city, to obtain money by the same scheme.

Annotation: Admissibility to establish fraudulent purpose or intent, in prosecution for obtaining or attempting to obtain money or property by false pretenses, of evidence of similar attempts on other occasions. 80 A.L.R. 1306.

Executors and administrators — *who may be.* In Re Thomas, — Wash. —, 80 A.L.R. 819, 8 Pac. (2d) 963, it was held that the provisions of a statute prescribing the order in which persons are entitled to administer an estate do not prevent the appointment of a stranger rather than one of the next of kin.

Annotation: Right in appointment of administrator to pass over eligible person interested in estate and appoint a stranger. 80 A.L.R. 824.

Gaming — *slot machines.* In Painter v. State, 163 Tenn. 627, 81 A.L.R. 173, 45 S. W. (2d) 46, it was held that a slot machine which, on the deposit of a coin, delivers a package of mints and a varying number of metal checks which can be used to put into operation another part of the mechanism by which a combination of symbols is made to appear representing various baseball plays, thereby enabling customers, with the assistance of a picture of the machine of a baseball field, equipped with an indicator, to play an imaginary game of baseball, is a device for gaming within a statute declaring the keeping of such a device to be a misdemeanor.

Annotation: Slot vending machine as gambling device. 81 A.L.R. 177.

Income taxes — *conditional obligations.* In Gilman v. Commissioner of Internal Revenue, 53 F. (2d) 47, 80 A.L.R. 209, it was held that amounts paid as stipulated interest on obligations executed in favor of the maker's wife and children, which obligations by their terms are non-negotiable, nonassignable, and nonpledgeable as security, and to be void in case of the death of the payee before maturity, are not deductible from gross income in determining income subject to Federal taxation, under the provisions of the applicable statute that, in computing net income, there shall be allowed as deductions all interest paid or accrued within a taxable year on indebtedness.

Annotation: Interest deductible in computing income tax. 80 A.L.R. 214.

Insurance — *agent's incorrect record of answer.* In Minsker v. John Hancock Mut. L. Ins. Co. 254 N. Y. 333, 81 A.L.R. 829, 173 N. E. 4, it

was held that an insured whose answers to questions of the medical examiner were incorrectly recorded in an application for life insurance, which, pursuant to statute, was attached to or indorsed upon the policy and constituted a part thereof, will not be permitted to recover because his oral answers were truthful.

Annotation: Insertion by insurer's agent in application of false answers to questions correctly answered by insured, or answers suggested by agent. 81 A.L.R. 833.

Insurance — *rescission after death.* In Peterson v. New York L. Ins. Co. — Minn. —, 80 A.L.R. 180, 240 N. W. 659, it was held that the beneficiary in an insurance policy, the reinstatement of which was obtained by the alleged fraud of the insured, after the death of the insured, accepted and for a month retained the premiums which were returned by the insurer on the ground of the alleged fraudulent misrepresentations of facts material to the risks. Held, a rescission by consent was completed as a matter of law.

Annotation: Rescission of policy of life or accident insurance after death of insured by agreement, express or implied, with beneficiaries. 80 A.L.R. 185.

Insurance — *temporary life policy.* In De Cesare v. Metropolitan L. Ins. Co. — Mass. —, 81 A.L.R. 327, 180 N. E. 154, it was held that a valid contract for temporary life insurance effective upon the acceptance of the application by the insurer at its home office is created by an application for a policy and a receipt issued to the applicant for the amount of the first premium paid by him, containing the statement that no insurance is in force on the application unless and until a policy has been issued thereon and delivered in accordance with the terms of the application, except that when such advanced payment is equal to the full first premium on the policy applied for and such application is approved at the home office of the company, "then the amount of insurance applied for will be in force from this date."

Annotation: Temporary life, accident, or health insurance pending approval of application, or issuance of policy. 81 A.L.R. 332.

Jurors — *test or experiment by.* In State v. Everson, — Wash. —, 80 A.L.R. 106, 7 Pac. (2d) 603, it was held that the use by the jury in the jury room of a magnifying glass which had not been introduced in evidence, in examining, for indications that it had been dragged along the ground, a walking stick found hooked to the underside of the automobile of one charged with manslaughter in running over a pedestrian to whom the stick belonged, was held not ground for reversing a conviction.

Annotation: Tests or experiments in jury room. 80 A.L.R. 108.

Municipal contracts — *rate of wages.* In Harlan v. Employers' Association, — Md. —, 81 A.L.R. 342, 159 Atl. 267, it was held that a provision of a city charter that not less than the current rate of wages in the locality where the work is performed shall be paid to laborers, workmen, or mechanics employed by contractors or subcontractors in any public work within the city, and prescribing a penalty for its violation, confers no power on the city to adopt a wage scale for municipal contracts.

Annotation: Power of municipality to fix specific scale of wages or hours for employees of contractors or subcontractors for municipal contracts. 81 A.L.R. 349.

Novation — *successor corporation's bonds.* In Wanamaker v. Com-

fort, 53 F. (2d) 751, 81 A.L.R. 133, it was held that a novation displacing the priority of lien of a mortgage securing an issue of corporate bonds is not effected by an exchange of such bonds for bonds of a successor corporation of like date and maturity, under an agreement that the new bonds should be subrogated to the rights of the old bonds and be secured by the original mortgage as fully as the old issue, and that the exchanged bonds should not be canceled, but should be retained by the trustee.

Annotation: Lien of mortgage securing corporate bonds as affected by exchange of bonds for those of reorganized or new corporations. 81 A.L.R. 139.

Partnership accounting — *profits after dissolution.* In Forbes v. Becker, 150 Okla. 280, 80 A.L.R. 1, 1 Pac. (2d) 721, it was held that it is not a uniform rule that when, upon the dissolution of a firm by the withdrawal of a partner, or by an agreement for termination, property of the firm, for instance, an interest in an oil and gas lease, and a contract to drill thereon, is taken over by one partner, and in such drilling a portion of partnership funds is used and some partnership tools are used, and the drilling results in discovery of gas in paying quantities, that the other partner is entitled to an interest in the lease or in the profits derived therefrom, but, on the contrary, the matter of a partnership settlement depends upon the nature of the trade, the mode of carrying it on, the capital employed, the state of account between the parties, the element of the baring of the risk, and the conduct of the parties after the termination of the partnership.

Annotation: Accountability of partner or joint adventurer for profits earned subsequently to death or dissolution. 80 A.L.R. 12.

Perjury — *materiality of false testimony.* In State v. Dunn, — Ind. —, 80 A.L.R. 1437, 180 N. E. 5, it was held that in an indictment for perjury, the materiality of the false testimony forming the basis of the charge may be pleaded by a general averment or may appear from the facts alleged.

Annotation: Sufficiency of general averment in indictment or information for perjury that the false statement was material. 80 A.L.R. 1443.

Public contracts — *mandamus to compel making of.* In State v. State Office Building Com. 124 Ohio St. 413, 80 A.L.R. 1376, 179 N. E. 138, it was held that mandamus is the proper remedy to compel public officials to enter into a contract with the successful bidder therefor.

Annotation: Mandamus to compel consideration, acceptance, or rejection of bids for public contract. 80 A.L.R. 1382.

Public officers — *collection of unused mileage.* In State ex rel. Fletcher v. Naumann, — Iowa, —, 81 A.L.R. 483, 239 N. W. 93, it was held that ground for removal of a public officer for wilful misconduct or corruption is not shown by the fact that he collected mileage on occasions when he had traveled at no cost to himself, where the allowance of mileage under such circumstances was not clearly forbidden by statute.

Annotation: Public officer's right and duties in respect of mileage and other allowances incident to duties of his office but which represented no actual expense or outlay by him. 81 A.L.R. 493.

Sale — *excuse for failure to deliver.* In Canadian Industrial Alcohol Co. v. Dunbar Molasses Co. 258 N. Y. 194, 80 A.L.R. 1173, 179 N. E. 383, it was held that the seller of a quantity of molasses "of the usual run from" a certain refinery is not discharged from liability by the nonproduction by such refinery of sufficient molasses to enable him to fill the contract.

Annotation: Inability of a seller of a commodity manufactured or produced by a third person to obtain the same from the latter as a defense to an action by the buyer for breach of the contract. 80 A.L.R. 1177.

Seduction — *compromise.* In Blount v. State, — Fla. —, 80 A.L.R. 830, 138 So. 2, it was held that neither forgiveness by the woman, compromise, settlement, nor marriage of the parties constitutes a condonation of the offense of seduction of unmarried persons of previous chaste character under eighteen years of age.

Annotation: Subsequent intermarriage of parties, forgiveness, compromise, etc., as defense to prosecution for seduction. 80 A.L.R. 833.

Stockholders — *right to inspect corporate books.* In State v. State Bank of Moore, 90 Mont. 539, 80 A.L.R. 1494, 4 Pac. (2d) 717, it was held that a stockholder has a right at common law to inspect the books of the corporation.

Annotation: Stockholder's right to inspect books and records of corporation. 80 A.L.R. 1502.

Taxation — *social clubs.* In Fleming v. Reinecke, 80 A.L.R. 1293, 52 F. (2d) 449, a finding that an organization is a social club within the provision of the Federal statute imposing a tax on dues of social clubs is supported by evidence that the club maintains a dining room, in which lunches and dinners are served, committee rooms, a lounge in which it maintains a general library and which is provided with newspapers and magazines,

that ladies of the families of members have the privilege of using the clubrooms except during certain hours, that members play cards and checkers there, and that entertainments, including dinner dances, have been held on different occasions.

Annotation: What is a social club within statute imposing tax on dues or membership fees. 80 A.L.R. 1296.

Taxes — *local taxation of railroad property.* In Terminal Warehouse Co. v. Milwaukee, 205 Wis. 607, 80 A.L.R. 247, 238 N. W. 513, it was held that where an elevator, warehouse, dock, hotel, or other property situated on railroad property, is principally used in the operation of the railroad, it is not subject to local assessment and taxation by virtue of a statute which provides that the state tax commission shall assess and tax railroad property except real estate not necessarily used in the operation of the road. 80 A.L.R. 248.

Annotation: What property is within provision in relation to local taxation of certain railroad property under statute or constitution providing for assessment or taxation of railroad property by state commission or board. 80 A.L.R. 252.

Telegraph company — *agreement to transmit money.* In Sharp v. Western Union Teleg. Co. — Ariz. —, 80 A.L.R. 293, 6 Pac. (2d) 895, it was held that a telegraph company not shown to have known that one to whom money was sent through its agency was among strangers and in distress for money cannot be held liable, by reason of its negligence in failing to pay over to him the money so sent, for loss on property which he was obliged to sacrifice to raise funds. 80 A.L.R. 294.

Annotation: Damages for breach of telegraph company's agreement to transmit money. 80 A.L.R. 298.

Trial — *consistency of verdict.* In Dunn v. United States, 284 U. S. 390, 80 A.L.R. 161, 76 L. ed. 356, 52 S. Ct. 189, it was held that consistency in a verdict convicting on one count of an indictment and acquitting upon others is unnecessary, since each count in an indictment is regarded as if it were a separate indictment, and an acquittal on one charge of crime cannot be pleaded as res judicata of a different charge, though based upon the same facts.

Annotation: Necessity of consistency in verdict in criminal case. 80 A.L.R. 171.

Unemployment relief — *contract provisions in public works.* In Bohn v. Salt Lake City, — Utah, —, 81 A.L.R. 215, 8 Pac. (2d) 591, it was held that power to require certain parts of the work to be done by hand labor, and labor employed by contractors to be rotated, with a view to alleviating unemployment, is not incident to authority conferred upon a city to provide a system of storm sewers, where the effect of such requirement is substantially to increase the cost without adding to the value or merit of the work.

Annotation: Power to include in municipal contract or proposal therefor, provisions designed to relieve local unemployment, or encourage local industries. 81 A.L.R. 255.

Venue — *state's right to change.* In State v. District Ct. — Iowa, —, 80 A.L.R. 339, 238 N. W. 290, it was held that if the community from which the jury for the trial of a criminal case must be drawn is excited and prejudiced against the prosecution, the state's application for change of venue should be granted.

Annotation: State's right to change

American Bar Association's New Head

CLARENCE Eugene Martin, of Martinsburg, West Virginia, the fifty-sixth President of the American Bar Association, holds the Bachelor of Laws degree from West Virginia University. He also holds the degree of Master of Laws from the Catholic University of America in Washington, D. C., of which institution he is now a trustee.

Mr. Martin has contributed much of his time and effort to Bar Association work. His services among many others have been rendered as President of West Virginia State Bar Association in 1924, member of the American Bar Association Committee of Insurance Law, member of the so-called Committee of Nine, and executive council of the Association's Mineral Section. Charter member of the American Law Institute, member of the American Bar Association executive committee for the past three years.

The Association is fortunate in having as its new President a man whose rich experience qualifies him so well for the duties of his office.

© *Harris & Ewing*

Clarence Eugene Martin

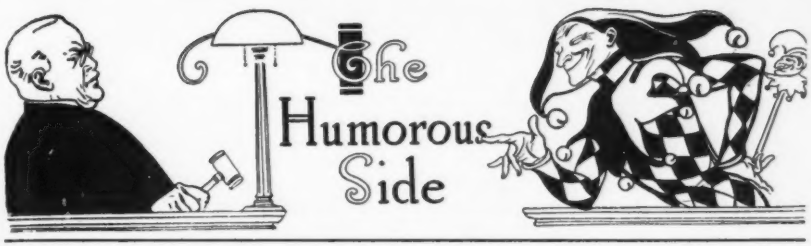
of venue in criminal case. 80 A.L.R. 355.

Wills — *incorporation of trust agreement.* In Re Locke, 258 N. Y. 327, 80 A.L.R. 98, 179 N. E. 755, it was held that a bequest to be held in trust "under the same terms and conditions embodied in" a trust agreement entered into prior to the making of the will is not invalid as making an unattested instrument a part of the will, even though the testator states that such trust agreement "is hereby made part of this my will as if fully set forth herein."

Annotation: Reference in will to extrinsic trust instrument for terms of trust created or enlarged by will. 80 A.L.R. 103.

Wills — *revocation of election.* In Re Daub, 305 Pa. 446, 81 A.L.R. 735, 157 Atl. 908, it was held that ordinarily, in the absence of a showing of fraud, and where no laches appears, a widow's petition to revoke an election between the provisions of her husband's will and her statutory rights must be presented within the period within which she is required to signify her election.

Annotation: Revocation of election to take under or contrary to will. 81 A.L.R. 740.



Mingle a little folly with your wisdom.—Horace.

A Moral Lesson.—A young man was offered an opportunity to make some big money quick. The scheme was legal but far from ethical. He told his mother of the glittering opportunity, and her answer is reported by Stuart Chase in an article entitled "The Luxury of Integrity."

"Tom," she said, "you know when I come to wake you in the morning I shake you hard, and you don't stir?"

"Yes," he said.

"And then I shake you even harder and you give a little moan?"

"Yes."

"And finally I shake as hard as I can, and you open one sleepy eye?"

"Yes."

"I'd hate to come in morning after morning and find you awake."

The young man decided that sound sleep was better than easy money and a disturbed conscience.—*The Latch String.*

That's Settled.—"Three months in jail," said the prisoner. "Splendid!"

"What do you mean, splendid?" demanded the judge sternly.

"Im sick and tired of my wife asking me where we're going for our summer holidays."—*Lustige Kolner Zeitung.*

Faithful Jimmy.—Burglar (to belated assistant)—"You're late. I told you 'arf past one."

Young Burglar—"I forgot the number of the 'ouse. I've had to break into every 'ouse in the street."—*Passing Show.*

Making Justice Hot.—A Jolly cab-driver was convicted Saturday of putting oil of mustard on the seat of a Yellow Cab in City Court.—*Memphis Press-Scimitar.*

Wotta Life.—An income-tax collector had died, and a subscription was raised in a Wall Street law office for a wreath. The boss promised five dollars. A few days later one of the clerks called to collect the money, and the lawyer handed him a 10-dollar note.

"You want five dollars' change, sir," said the clerk.

"No," growled the other; "keep it and bury another."—*Exchange.*

Shoot!—"Are all the news cameramen here?"

"Yes, your honor."

"Lights O. K.?"

"Yes, your honor."

"Sound O. K.?"

"Yes, your honor."

"Good, then let justice take its course."

—*Judge.*

Nuisance per se.—One kind of nuisance is a man who works but tries to impress others that he doesn't really have to.

—*Exchange.*

Underworld on Top.—The influence of gangster films has shown its effect, not only upon the youngsters but adults as well.

Take the case of the school-teacher who absent-mindedly barked: "Stick 'em up!" when he wanted those members of the class who knew the answer to signify in the usual way.

—*New York Morning Telegraph.*

He Left Her Everything.—Mrs. Flipps: Mrs. Jinks' husband has just died and left everything to her.

Mrs. Doods: Well, that's what he did when he was alive.

Nuisance Defined.—The Supreme Court in Euclid v. Ambler Realty Co. at page 272 U. S. 388, 71 L. ed. 311 through Mr. Justice Sutherland said: "A nuisance may be merely a right thing in the wrong place,—like a pig in the parlor instead of the barnyard."

Lessons in Manners.—"I'm sorry the manager isn't in," said the clerk to the pompous individual who had strutted in. "Is there anything I can do for you?"

"No," snapped the visitor. "I never deal with underlings. I'll wait until the manager returns."

About an hour later the pompous one became impatient.

"How much longer do you think that manager will be?" he demanded.

"About two weeks," was the reply. "He just left on his vacation."

—*Boston Transcript.*

Clear All Wires.—"Put up your hands!" commanded the larger of two bandits who had stopped the coach. "We're goin' to rob the gents and kiss all the ladies."

"No," remonstrated the smaller one, gallantly. "We'll rob the gents all right, but we'll leave the ladies alone."

"Young man," snapped a female passenger of uncertain age, "mind your own business! Your friend's managing this hold-up!"—*Legion Weekly.*

S'prise.—A farmer sold a load of produce at the market and he decided to surprise his wife, so he bought a suit of clothes, a hat, a pair of shoes and put them under the seat. On his way home he stopped at the river, took off all his old clothes and threw them in. Then he looked under the seat for his new outfit. Everything was gone.

He thought for a moment, then he climbed into his wagon, cracked his whip and said: "Gidup, I'm goin' to s'prise her anyhow, by heck!"—*Building Owner and Manager.*

Beyond Reasonable Doubt.—Counsel: "Is it true that there are traces of insanity in your family?"

Witness: "Very likely."

Counsel: "On what do you base your statement?"

Witness: "My grandfather, who was studying for the ministry, gave it up to become a lawyer."—*Selected.*

Post-War. — The Magistrate — "The prisoner says he had two glasses of 'double brown.' What is this 'double brown,' sergeant?"

The Sergeant (sadly)—"Not wot it was, your worship!"—*Humorist.*

Songs of Buds and Bullets.—First Lawyer—"I've just taken the case of that woman who says she shot her husband because she loved him."

Second Lawyer—"I suppose your plea will be that spring is the time for tender shoots."—*Wisecracker.*

Down Where the Wurzburger Flows.—The policeman's son was learning music.

"How many beats are there to the bar in this piece of music, Dad?"

"Fancy asking a policeman a question like that," said the boy's mother. "If you asked your daddy how many bars there were to the beat he might have been able to tell you!"—*Tid-Bits.*

Clinching the Diagnosis.—The eminent alienist recognized the thug who was holding him up.

"Look here," he protested, "I'm your benefactor. Don't you recall that I once saved you from a life sentence by proving you crazy?"

"Sure, I remember you now," the thug said as he continued his work. "And ain't holdin' up your benefactor a crazy thing to do?"—*Boston Transcript.*

Friend of the Jobless.—"Just what good have you done to humanity?" asked the judge before passing sentence on the pickpocket.

"Well," replied the confirmed criminal. "I've kept three or four detectives working regularly."—*St. John's Telegram.*

Had to Own Up.—A cinema actor, suing for a breach of contract, described himself as the greatest actor in the world.

One of his friends took him to task for so loudly singing his own praises.

"I know," replied the actor, "it must have sounded somewhat conceited, but, remember, I was on oath."—*Toronto Globe.*

Neighborly Act.—Bail of $5 was forfeited last night by ————, when he failed to appear before Justice of the Peace —— on a charge of instigating a dog fight in the town last week.

The complainant was ————, who alleged Lambert "sicced" his police dog on the other man's small terrier. Both are officers of the ———— Neighborly Neighbors.

—*Exchange.*

AMERICAN LAW REPORTS SCORES AGAIN

We suggest that you write for details about our liberal finance plan for the purchase of A. L. R. The L. C. P. Co.

Carson & Carson
Attorneys and Counselors at Law
Salem, Oregon

August
Fifth
1932.

American Law Reports,
Aqueduct Building,
Rochester, New York.

Gentlemen:

Re: Bronn v. Soules et al.

We thought you would be interested in knowing that in its decision in the above-entitled suit, rendered on the first instant, the Supreme Court of the State of Oregon, cited, as its only supporting authority, 78 A.L.R. 938. This volume came to us after all the briefs had been printed and filed and we hastily cited it to the Supreme Court by letter. Apparently, it was just what we needed.

As in the case of Livesay vs. Lee Hing, in which you requested our briefs, we were associated with Mr. H. Overton of Woodburn, Oregon.

Faithfully yours,

CARSON & CARSON,

By Allan G. Carson

AGC:VS

Case and Comment
THE LAWYERS MAGAZINE

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Tall Yarn.—Police Chief — "How's that murder story?"

Cop—"The same old bunk! They catch the murderer in the end!"

—*C. C. N. Y. Mercury.*

The Right Legal Process.—"That man swore at us, John. Can't we have him arrested?"

"Of course. Under a man-dam-us."

—*Boston Transcript.*

Cramped Her Style.—On the grounds that a fall prevented her from dancing, skating and bedsledding, Mrs. Isabella H————, 72, of White Plains, is suing the New York Central railroad for $35,000.

—*Halifax (Va.) paper.*

Getting the Real Low-Down.—There is quite a good deal of misunderstanding about the limits for using hose for sprinkling purposes in Amherstburg. A woman phoned the city water office regarding the hours for sprinkling the lawn. "What is the proper time to put on my hose?" she asked. "Really, madam, I believe immediately after your 'step-ins,'" came the quick reply.—*Amherstburg (Ont.) Echo.*

Contributed. — The following four squibs are sent us and vouched for as actual happenings by attorney Marcelle Malone of Mobile, Alabama.

You've probably heard one and all those past yarns about the half an half coffee—a foursome upon arriving at a rather popular supper resort gave the order for food, ordering coffee. One of the party ordered coffee "half and half" wherewith the porter inquired whether she wanted it half before and half after dinner. (And he stuttered at that.)

The following is taken from a stenographer's notes: "I am duplicating the Complaint but am illuminating Count 3." Taken from a letter written to a brother attorney, supposedly to explain the style of suit—what suit!

After sitting some time and watching a legal secretary at work very diligently for some minutes the negro remarked, "lawsy me miss you sho has got ejicated fingers."

Upon coming in after feeding the chickens, Junior, aged 5, upon being asked if the chickens enjoyed the feed replied, "course they did, I heard 'em smack their lips."

The Frog and the Well.—The following legal notice appeared in a southern paper.

Notice is hereby given that ——— ———, guardian of the estate of ——— ———, minor, has this day made application unto me for a final discharge as such guardian

A South American frog living in the Andes Mountains section carries its young in a pouch on its back.
of said petition.

Insane Delusion.—Attorney Thomas C. Humphry of Hugo, Oklahoma, writes: "At the trial of Rev. Solomon Hotema, for killing two Indian women and one man because they were witches working on his congregation where he was preaching, in Choctaw Nation, our defense was Insane Delusion. A witness was asked did you know defendant, and did you see and talk with him often. Witness replied he knew him and talked to him often. Question was then asked, from what he said and what he did in your presence do you think he was sane or insane. Witness answered: "Well from the irrationality of his conduct, I would pronounce him sane."

Limited Value.—Theodore Hopwood, attorney of Hawesville, Kentucky, writes:

While looking through the records I ran across a deed which contained the following: "Witnesseth: That the party of the first part, for and in consideration of the sum of One Dollar, cash in hand, paid, *and the love and affection that he has for his wife, not to exceed one hundred dollars,* ($100.00), the receipt of which is hereby acknowledged, has bargained and sold, etc."

A similar line of humor appears in the contribution of Louis Spielvogel of Newark, N. J., an extract from a will: "To my wife Anna, who is no dam good, I give and bequeath the sum of $1.00.

Expensive Luxuries.—Attorney Charles B. Schwanda of Long Island City, N. Y., sends us the following decision by Judge Wenzel of the Supreme Court of that state in Boyce v. Boyce—Of all expensive hobbies the collection of wives is among the most expensive. If the affidavit of the plaintiff is to be believed (and it is not rebutted by the defendant) the court can readily understand that payment of $1,000 per month alimony to two ex-wives and the support of a prospective third, is likely to be a source of embarrassment and a drain to even a wealthy man. But these are thoughts upon which the defendant might well have cogitated during his quest for the Golden Fleece of connubial bliss. The plaintiff has voluntarily accepted a reduction in alimony from $2,000 per month to half thereof, to meet the reduced circumstances of the defendant, but while his first wife took him for better or for worse, there did not enter into the contemplation of the parties the necessity of his providing for additional wives. When, moreover, the plaintiff accepted a reduction in alimony an agreement was entered into between the parties, not dependent upon the income of the defendant, and secured by the pledge of certain stock in defendant's holding company. The value of this stock it is alleged he has depleted by gifts to his third inamorata. The wives of the defendant have claims upon his support in the order of their acquisition by him, wives subsequent to the first taking him with knowledge of prior liens. The defendant is not an old man and if he continues upon his present way, and the plaintiff is compelled to accept reductions as the defendant accumulates wives

her income will so approach the vanishing point. Motion denied.

A Sound Sleeper.—Attorney Robert L. Page of Louisville, Kentucky, writes:

"According to the allegations made in a suit brought by a tenant against a landlord to recover damages the plaintiff was indeed a sound sleeper.

"The petition alleged that the plastering from the ceiling fell upon the plaintiff while she was asleep in the bed with great force and violence."

By Laws De Luxe.—The following extracts from the official By Laws were sent us by an attorney who requests that his name be not used.

Seal.

The corporate seal of the corporation shall be inscribed there on the name of this corporation, the year of this creation, and the words of its The Delware Amendment & No Business shall be transacted except under the company's seal. And must be carried before the board of directors if there is any & all business must be signed by the president, secretary, and treasure of this company and that is if the secretary and treasure thought are valuable and then all 3 person must come to one agreement before the signature of the President is signed.

IV. Officers.

The *President of Company* shall remain until time in memorial. The President upon his retirement from office shall outhorize whom he feels fit to fill his vacancy.

The officers of the Company is the president and have right to call vice-president etc.

All respect should be due to the president, no fighting or trouble making be allowed under this law. The president and officers shall recognize themselves. Anyone that break these rules and regulations shall be fined or taken to court.

No inspection of the books except ordered by the board of directors.

Any stockholder, officer, or director may ask any question concerning the by-laws of the company.

Artificial Light.—Attorney Bramwell R. King of Kalamazoo, Michigan, calls our attention to the opinion of the court in Dietz and Co. v. Burr, wherein it is said: "We further believe, in the light of a long line of tubular lanterns . . . that nothing more than the skill of a mechanic was involved."

Whats in a Name.—Judge L. M. Merriman of Vero Beach, Florida, sends us the following question and answer occurring during the last term of court there.

Atty.—What is your occupation?

Witness—Painter.

Atty.—Itinerary painter?

Witness—No, a house painter.

Lease of Fixtures.—Floyd Foster, attorney of Yakima, Washington, sends us a copy of the following lease.

This is to certify that I ———— has leased to ———— the place whare he is located for 12 months from the first day of September 1932 to Sep. 1933 and dont no how much longer for the sum of 25 dollars with the understanding he treats me as he has in the past.

Judicial Advertising.—District Attorney Kennon of the twenty sixth Judicial District of Louisiana contributes a news paper clipping.

Attis Williams, assault with a dangerous weapon. Tried, and motion for arrest of judgment filed. Taken *under advertisement* until tomorrow.

Attorney Geo. H. Stipp of Los Gatos, California, sends us the two following contributions:

Judge: "And what did you do when you heard the accused using such awful language?"

Policeman: "I told him he wasn't fit to be among decent people, and brought him here."—*Boston Transcript.*

"Did you hear the joke about the film star?"

"No, what is it?"

"Her secretary did'nt keep the records straight and now she finds she has had two more divorces than she's had weddings."

—*Boston Transcript.*

Right at Home.—Roy L. Featherstone, Esq., of St. Johns College, New York, writes: "One of the defendants was being cross-examined by plaintiff's attorney and

his answers were inaudible. He was requested to speak louder so that the jury could hear his testimony. Whereupon Judge Swope interposed with, 'Yes, talk out loud like you do in police court.'"

Early Warrant.—The following copy of the first warrant issued in Breathitt County, Kentucky, was sent us by J. C. Parker, Esq., of Knoxville, Tenn.

"I, Jackson Terry, Hi official Magistrate, Squire and Justice of the Peace, do hereby issu the following rit aginst Henderson Harris chargin him with assault and battery and the breach of the peace on his brutherin lau, Tom Fox, by name, this warrant cuses him of kickin, bitin and scratchin and thron rocks and doin everything that wuz mean and contrary to the law in the state of Jett's creek aforesaid.

"This warrant otherises the hi constable, Mills Terry by name, to go forthwith and forthcomin and rest the sed Henderson Harris and bring him to bee delt with accordin to the law of Jett's creek and aforesed. This warrant otherizes the hy constable to take him whar he finds him on the hill side as well as in the level to take him whar he aint as well as whar he is and bring him to bee delt with according to the laws of Jett's creek and aforesaid."

A Legal Marathon.—In July of 1931 the Philippine government began the criminal prosecution of one Cu Unjien, who seems to have swindled various entities in the Philippines to the extent of about five million pesos, among the victims being the Hongkong-Shanghai Banking Corporation for one million four hundred thousand and the National City Bank for six hundred thousand, the swindling being done by forged "quedans" (warehouse receipts). The trial, as stated above, began in July of 1931 and for seven or eight months there were daily hearings each forenoon. After that there were hearings mornings and afternoons and for the last two or three months hearings have been heard daily—mornings, afternoons, and evenings. The trial is still going on and the end does not seem to be in sight. Three months ago there were eight thousand pages of testimony. The judge who started hearing the case is now a member of the Supreme Court and another judge has been handling it for the last three or four months.

Easy to Get Her to Weep.—Lawyer—To help me to get you acquitted, your wife will have to weep a little during the trial.

Client—That's easy; just tell her I'm going to be acquitted.—*College Life.*

Indissoluble Marriages.—A South Dakota J. P. was in the habit of ending his marriage ceremonies as follows: "What this court has joined together let no other court put asunder."

Deceitful Appearances.—Minister (calling on inmate of prison)—"Remember Mr. Kenny, that stone walls do not a prison make, nor iron bars a cage."

Kenny—"Well, they've got me hypnotized then; that's all."—*Dallas News.*

Bide a Wee.—In an asylum two worthies named Sandy and Tam, formed a plan to make their escape. Sandy said to Tam:

"Bend doon and I'll get on yer back and get on the tap o' the wall and haul ye oop."

Sandy got on top of the wall and slid down the other side, saying:

"Tam, I think ye'll better bide anither fortnicht, for ye're no near sane yit."

Too Often.—George Ade, in his quality of cynical bachelor, said at the Chicago Athletic Club:

"I was sitting with a little girl of eight one afternoon. She looked up from her Hans Anderson and said:

"'Does m-i-r-a-g-e spell marriage, Mr. Ade?'

"'Yes, my child,' said I."

—*Minneapolis Journal.*

When an automobile stops along the road in daylight, that's trouble. When it stops at night, it's romance.

"Sandy, I dinna like the way ye drive so close to the car ahead. An' it's night, too."

"Whisht ye, woman. Dinna ye ken that I can turn off ma headlights that way an' save the battery?"

—*The Building Owner and Manager.*

An old darkey named Joshua Alston was charged with illicit distilling (making "moonshine" liquor) in the Federal Court of the Eastern District of North Carolina. He took the witness stand in his own defense whereupon the judge said: "Are you the Joshua that made the sun stand still?"

The old darkey answered: "No, I'm the fellow whar you say made the moon shine."

POLICE COURT BLUES

Actual Washington Happenings

Woman (testifying)—He said he would strangle me, and anyone else who interfered with him, so I fetched a policeman.

Counsel—I am formally asking for the costs of this application.

Court—And I am formally—equally formally—refusing them.

Court—As you have no money to pay this debt, you rather regret borrowing this money, do you not?

Witness—I think he regrets it more than I do.

Witness—He would have struck me, but he saw I had a milk bottle in my hand, and he understood what was passing in my mind.

Court—And what did you intend doing with the milk bottle?

Witness—I had not quite made up my mind about it.

The Juror's English.—In a case on trial, the plaintiff was represented by the late Earl Rogers, the defendant by a young lawyer of oratorical proclivities who nourished the hope that because he earned the price of his first law book as a wood chopper, he would be recognized some day as a second Lincoln.

Always eager to display a broad, but none too well understood vocabulary, the attorney, whom we will call Mr. Allen, cross-examined Mr. Rogers' client as follows:

Q: "Is it not a fact, Mr. Blank, that in this conversation which you relate, my client called you a liar?"

A: "Yes, he did."

Q: "And you were considerably 'piked' at that accusation, were you not?"

Mr. Rogers: "May I ask counsel to kindly repeat that question? I am not quite certain that I understood it."

Mr. Allen: "I said, you were not considerably 'piked,' were you not, when the defendant called you a liar?

Mr. Rogers: "If the Court please: I object to the question upon the ground that the Constitution of the State of California provides that all judicial proceedings shall be conducted in the English language."

—Los Angeles Bar Ass'n. Bulletin.

We are indebted to attorney Geo. H. Stipp, San Jose, California for the two following appropriately indexed jokes.

Give 'Manda Her Due.—"Well, Sambo," said an American judge, "so you and your wife have been fighting again. Liquor, I suppose?"

"No, sah," said Sambo, "she licked me dis time."—*"Bank Notes." Los Gato's First Nat. Bank.*

Med-ethically Unanswerable.—When Gladys Martin, acknowledged to be one of Los Angeles prettiest nurses, was a probationer in one of the Massachusetts hospitals, she made a mistake that put her in wrong with at least one doctor.

"Good gracious," cried the physician as he glanced at a death certificate Miss Martin had made out for him, "you have filled in my name as the cause of death!"

"Well?" demanded Gladys icily.—*"Bank Note." Los Gato's First Nat. Bank.*

Subnormal.—"Did you find that last applicant for a driver's license normal in all respects?"

"No, he's never sworn at a truck driver." —*Motor Land.*

An old negro was convicted in Winston-Salem, N. C., of a nameless crime. His attorney, on the bringing in of the verdict, moved in arrest of judgment, contending that the facts alleged in the indictment did not constitute a crime. The judge remarked that it was a crime under the common law. The old darkey whispered to his attorney: "Dat air judge says I'm guilty under de common law, and its damn common."

Squirrels and Nuts.—Scotch boy friend (calling up his girl): "Hello, dear, would you like to have dinner with me tonight?"

She: "I'd love to, dear."

He: "Well, tell your mother I'll be over early."